

122 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Startrans IO, L.L.C.

Docket No. ES08-24-000

ORDER CONDITIONALLY AUTHORIZING ISSUANCE OF SECURITIES

(Issued March 20, 2008)

1. Startrans IO, L.L.C. (Startrans IO) filed an application under section 204 of the Federal Power Act (FPA)¹ requesting authorization to issue debt securities in an aggregate amount up to \$11.4 million, consisting of \$10.8 million in senior secured term loan facilities (Term Loan Facilities) and up to a \$600,000 secured revolving credit facility (Working Credit Facility) (together, the Credit Facilities). In addition, Startrans IO seeks authorization to issue up to \$25 million of equity in the form of common membership interests. This order conditionally grants Startrans IO's request for authorization.

I. Background

2. Startrans IO is a newly-formed,² transmission-only limited liability company created for the purpose of acquiring, owning, and managing the Mead Transmission

¹16 U.S.C. § 824c (2000).

² Startrans IO states that, because it was formed on January 2, 2008 and therefore has no historical financial data, it is unable to provide the Balance Sheet, Income Statement and Statement of Cash Flows for the most recent 12-month period required under section 34.4 (c), (d) and (e) of the Commission's regulations. 18 C.F.R. § 34.4 (2007). Startrans IO offers alternative financial data and requests a waiver of these regulations.

Interests.³ Its membership interests are owned by Startrans IH, L.L.C. (Startrans IH), a Delaware limited liability company. Startrans I, Inc. (Starcorp), a Delaware corporation, owns all of the membership interests in Startrans IH. In turn, Starcorp's shares are owned by Startrans I, L.L.C., a Delaware limited liability company. Starwood Energy Infrastructure Fund, L.P. (SEI Fund), a Delaware limited partnership, owns all of the membership interests in Startrans I, L.L.C.

3. On December 13, 2007, SEI Fund and the City of Vernon, California (Vernon) entered into a Purchase and Sale Agreement (Agreement) under which Vernon will sell and Startrans IO will acquire, upon payment of the purchase price at closing, the Mead Transmission Interests (the Transaction).⁴

4. Startrans IO states that upon acquisition of the Mead Transmission Interests, it will be an independent transmission company and public utility that will own and manage transmission facilities subject to the jurisdiction of the Commission. The Mead Transmission Interests will be under the functional control of the California Independent System Operator Corporation (CAISO).

5. Startrans IO proposes to obtain its bank financing from WestLB AG, New York Branch (WestLB) and/or WestLB's affiliates or other financial institutions as deemed appropriate by Startrans IO for the Credit Facilities, up to an aggregate amount of \$11.4 million. The Credit Facilities include: (1) \$10.8 million in Term Loan Facilities, consisting of a \$8.7 million Term Facility, a \$1.6 million Delayed Draw #1 Facility, and a \$500,000 Delayed Draw # 2 Facility; and (2) a \$600,000 Working Capital Facility. According to the Application, the Term Facility proceeds will be available on the closing date and will mature on the 17-year anniversary of the closing date. The Delayed Draw

³ The Mead Transmission Interests consist of the City of Vernon, California's interests in the Mead-Phoenix Transmission Project (a 1,300 MW, 500 kV AC transmission line) and the Mead-Adelanto Transmission Project (a 1,296 MW, 500 kV AC transmission line).

⁴On January 4, 2008, Startrans IO made a section 203, 16 U.S.C. § 824b (2005 Supp.), filing in Docket No. EC08-33-000 requesting authorization to purchase the Mead Transmission Interests and for Startrans IO to own and manage these facilities as an independent transmission company. Also, on January 4, 2008, Startrans IO made a section 205, 16 U.S.C. § 824d (2000), filing in Docket No. ER08-413-000 to establish a transmission revenue requirement for the Mead Transmission Interests. The section 203 and section 205 filings will be dealt with separately.

#1 Facility will be available for up to 120 days after the closing date and will mature, according to the application, on the 17-year anniversary of the closing date. The Delayed Draw #2 Facility will be available for up to 24 months after the closing date and will also mature on the 17-year anniversary of the closing date. The revolving credit facility will be available, as needed, from the closing date and will mature on the five-year anniversary of the closing date. Startrans IO requests a waiver of the competitive bidding and negotiated placement requirements of sections 34.2(a) and 34.2(c)(1) of the Commission's regulations.

6. Startrans IO proposes to issue up to \$25 million of equity consisting of one class of common membership interests that will be issued to one holder, Startrans IH.

II. Notice and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 4,202 (2008), with protests or interventions due on or before February 1, 2008, subsequently extended to February 15, 2008. On January 25, 2008, M-S-R Public Power Agency filed a motion to intervene. On February 1, 2008, the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California filed a motion to intervene. On February 1, 2008, the California Public Utilities Commission (CPUC) filed a notice of intervention and motion for additional time to file comments and protest.

8. On February 1, 2008, Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric Company (collectively, California Parties) filed a motion to intervene and protest, motion to consolidate and a request for a hearing.

9. On February 7, 2008, the Commission issued a Notice of Extension of Time to file comments or protests. On February 8, 2008, Startrans IO filed an Answer to the California Parties Motion to Intervene and to Protest, Motion to Consolidate and a Request for a Hearing.

10. On February 15, 2008, the CPUC filed a protest.

A. Protests

11. The California Parties argue that approval of Startrans IO's filing under FPA section 204 would significantly prejudice California ratepayers and result in unjust and unreasonable rates. They argue that Startrans IO's various related filings under sections 203, 204 and 205 contain several factual discrepancies that must be remedied prior to Commission approval in any of the dockets. Specifically, the California Parties assert

that the amortization period Startrans IO uses in its application under FPA section 205 for purposes of calculating its transmission revenue requirement (TRR) differs from the amortization period used in its application under section 204.⁵ Based on additional alleged discrepancies between Startrans IO's filings under sections 204 and 205, they also argue that Startrans IO may be trying to understate the share of long-term debt in its capitalization and overstate the share of common stock equity. They also point to differing statements in Startrans IO's section 204 and 205 filings to argue that its estimated cost of long-term debt may be inflated.

12. The California Parties argue that the only way to cure these alleged discrepancies is through consolidation of Startrans IO's three filings. They argue that consolidation is appropriate because there is a nexus of common fact and law among the three filings and the Commission should set all three proceedings for a single hearing.

13. The CPUC makes several observations pertaining to the proposed transfer of the Mead Transmission Interests and Startrans IO's ultimate TRR. Specifically, the CPUC argues that this Commission should not approve any issuance of securities to finance the Transaction until several issues pertaining to Vernon's TRR, including a long-standing Commission proceeding in Docket No. EL00-105-000, have been resolved. In addition, the CPUC argues that Startrans IO's application under section 204 should be held in abeyance until Startrans IO can demonstrate that a contractual issue between the Los Angeles Department of Water and Power and Vernon can be resolved.

B. Startrans IO's Answer

14. Startrans IO responds that it has not provided any inaccurate information in this proceeding, but that to the extent any actual discrepancy exists between its three filings, it will be resolved through conforming changes to reflect actual financing terms once the Transaction closes. It argues that Commission regulations at section 34.10 require Startrans IO to report on the actual terms of security issuances within 30 days. Only then, when the actual securities are issued, can Startrans IO be certain of the actual costs and terms of the securities. Startrans IO argues that financing costs are always open to negotiation until the actual securities are issued and that therefore any specific argument concerning cost discrepancies between its filings is premature.

⁵ The California Parties argue that Startrans IO uses a 15-year amortization period in its FPA section 205 application and a 17-year amortization period in its FPA section 204 application.

15. Startrans IO objects to consolidation of its three filings and to setting any of the proceedings for hearing. It argues that the three proceedings involve wholly separate questions of law and fact and that consolidation would jeopardize its transaction.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Startrans IO's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

17. FPA section 204(a) provides that requests for authority to issue securities shall be granted if the Commission finds that the issuance: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.⁶

18. We conclude that Startrans IO's application meets the standards of FPA section 204. Startrans IO's proposed issuance of securities is for a lawful object within Startrans IO's corporate purposes and is necessary, appropriate for and consistent with Startrans IO's performance as a public utility. Startrans IO states that obtaining the Credit Facilities and issuing equity will allow it to pay the acquisition price for the Mead Transmission Interests and related transaction costs, and to provide it with the funds necessary to pay for expected capital expenditures, satisfy its working capital needs, and fulfill other corporate purposes related to its ability to perform as a public utility after the closing of the Transaction. As discussed below in Paragraph 22, the Commission has determined, in an alternative computation of the Interest Coverage of the maximum amount of debt authorized in the Credit Facilities, that Startrans IO's service of its proposed debt will not impair its ability to perform service as a public utility because its

⁶16 U.S.C. § 824c(a) (2000).

Income Before Interest and Income Taxes exceeds twice its Total Interest Expense; this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility.⁷ This buffer would not be present if the Commission used a screen of one times its Total Interest Expense, yet is not so conservative as to unreasonably impede the financing of facilities found to be compatible with the public interest.

19. The California Parties state that Startrans IO's section 205 filing states that the issuance of debt securities will mature in 15 years, but the section 204 filing states that the term loan facilities and revolving credit facility will mature in 17 years. Therefore, the California Parties assert, Startrans IO has incorrectly calculated the annual amortization of fees and inflated its cost of debt by at least nine basis points or has provided the Commission with incorrect information.

20. The California Parties do not explain, however, how they computed the nine basis point figure or why the difference or the additional basis points has a material impact on the analysis required by section 204. The California Parties are correct that, in the text of the section 204 filing, Startrans IO asserts that the Term Loan Facilities "will mature on the seventeen (17) year anniversary of the Closing Date," while it uses an annual amortization of 15 years for the Recoverable Fees it is claiming in the section 205 filing. The Recoverable Fees claimed in the section 205 filing are \$963,500 and the Annual Amortization over 15 years is \$64,233. The same total amount amortized over 17 years would produce an Annual Amortization of \$56,676, for a difference of about \$7,600 per year. The extent, if any, to which the Recoverable Fees claimed by Startrans IO will be included in rates will be determined in the proceeding under section 205. For purposes of the Commission's analysis in this proceeding under section 204, even assuming that the entire amount of \$963,500 is included in rates as part of the cost of debt, the difference between using a 15-year amortization for the Recoverable Fees and a 17-year amortization in the computation of Interest Coverage required under 18 C.F.R. § 34.4(e) is immaterial. Either way, the computation results in an Interest Coverage that exceeds twice the company's Total Interest Expense, which is a screen that the Commission finds to be reasonable at this time because, as noted above, it provides a buffer against

⁷ In those cases where the applicant does not meet the screen of twice its Total Interest Expense, it does not necessarily mean that the Commission would deny an application. Further, we note that meeting the screen does not always mean that the Commission will authorize an application. Other data may show that the proposed new debt will or will not impair the applicant's ability to perform as a public utility.

unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility.

21. The California Parties correctly note that Startrans IO seeks authorization under section 204 for Credit Facilities up to an aggregate amount of \$11.4 million but uses \$8,628,449 in long-term debt as its sole debt component for its proposed capital structure underlying its proposed section 205 rate of return (shown on Statement AV, attached to the section 205 filing). According to the California Parties, "it is not possible to reconcile the two without additional information," and they assert that Startrans IO may be "seriously understating the share of long-term debt in its capitalization and overstating the share of common stock equity." Both of these issues are more appropriately addressed in, and can be addressed in, the section 205 proceeding. For purposes of the section 204 analysis, the Commission will make the conservative assumption that the entire amount for which authorization is requested will be used. Therefore, we will use the aggregate amount of \$11.4 million, obviating the need to reconcile these figures for purposes of the section 204 analysis.

22. Specifically, Startrans IO seeks authorization to issue debt in an aggregate amount of \$11.4 million. In the Computation of Interest Coverage attached to the section 204 filing Startrans IO shows an interest expense of \$595,363. It does not show in the section 204 filing how it derived the \$595,363, although that number first appears as "Interest on Long-Term Debt" on the 2008 Projected Income Statement attached to the section 204 filing. The same amount then appears again as "Interest on Long-Term Debt, Interest on Short-Term Debt, Other Interest Expense, Total Interest Expense" on the 2008 Computation of Interest Coverage, also attached to the section 204 filing. The \$595,363 figure is the approximate amount of interest attributable to one component of the Credit Facilities, the \$8.7 million Term Facility, at an interest rate of 6.9 percent. It appears that Startrans IO has performed the Interest Coverage computation as to only the largest of the four components of the \$11.4 million Credit Facilities. Therefore, the Commission has performed an alternative Interest Coverage analysis. In this alternative analysis, the \$595,363 in total interest expense shown by Startrans IO in its Computation of Interest Coverage was replaced with \$786,600, which reflects application of the 6.9 percent maximum interest rate to the total amount requested under the Credit Facilities of \$11.4 million. This alternative analysis also results in an Interest Coverage that exceeds twice its Total Interest Expense, which we find to be reasonable.

23. Lastly, the California Parties state that the section 205 filing shows an estimated cost of long-term debt of 7.64 percent and characterize Startrans IO's section 204 filing as proposing an "estimated cost rate of 6.9 percent" as a maximum rate for the Credit Facility. The California Parties state that Startrans IO has not demonstrated that this is the rate that will actually apply to its Credit Facilities, so its estimated cost of long-term

debt may be inflated. They assert this as an additional reason why the Commission should consolidate the section 204 filing with the section 203 and section 205 filings and set them for a joint hearing.

24. The California Parties are confusing the concepts of “interest rate” and “cost of debt.” Startrans IO, in the section 204 filing, requests authorization for the Credit Facilities with “an effective fixed (interest) rate up to 6.9 percent,” applicable “for all outstanding amounts under the Credit Facilities.” The proposed Credit Facilities are in an amount up to \$11.4 million and, as described in Paragraph 5 of this order, all amounts for which authorization to issue debt are requested under section 204 are considered components of the Credit Facilities. Therefore, Startrans IO has proposed a maximum interest rate of 6.9 percent to be applicable to all amounts for which authorization to issue debt is requested.⁸ The authorization granted herein will be conditioned on a maximum interest rate of 6.9 percent. The figure proposed by Startrans IO as its cost of debt, 7.64 percent, has several components, including a maximum interest rate of 6.9 percent. The cost of debt will be addressed in the proceeding under section 205.

25. We deny the California Parties’ and CPUC’s requests to consolidate the proceeding in this docket with the proceedings under sections 203 and 205 of the FPA. In general, the Commission consolidates matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency. In this case, however, Startrans IO has satisfied all the requirements under FPA section 204. We cannot conclude that consolidating this proceeding with the proceedings under FPA sections 203 and 205 is appropriate because we find nothing in the section 204 proceeding that needs to be set for a trial-type evidentiary hearing.

26. The Commission conditionally authorizes Startrans IO to issue debt securities as described by the Credit Facilities and for the purposes described in the application in the aggregate amount up to \$11.4 million outstanding at any one time, subject to the following conditions. In addition, the Commission authorizes issuance of up to \$25 million of equity in the form of common membership interests. While we authorize Startrans IO’s requests here, we remind parties that it is incumbent upon them, when

⁸ Consistent with the conservative assumption discussed above as to the amount of debt used in the Interest Coverage computation, we also made the computation based on the maximum amount of debt but used the 7.64 percent cost of debt in place of the 6.9 percent interest rate. In this computation the Interest Coverage exceeded twice the Total Interest Expense as well.

making filings with the Commission, to ensure that the information they provide is accurate.

27. The securities are subject to the restrictions the Commission imposed on secured and unsecured debt in *Westar*.⁹ In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt. First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or “spun off,” the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off.

28. Both the debt authorized herein and the equity securities are subject to the requirement that Startrans IO file a Report of Securities Issued within 30 days after the sale or placement of any long-term debt or equity securities, as stated in the Commission’s regulations.¹⁰

29. This authorization is also conditioned upon ultimate approval or acceptance of Startrans IO’s applications under sections 203 and 205, which are currently under review. The proposed transfer for which section 203 authorization is requested is the public utility purpose underlying this section 204 authorization and the rates under review in the section 205 proceeding are the principal source of revenue through which the debt authorized in this order will be serviced. This order does not prejudice any issue in the section 203 or 205 proceedings.

The Commission orders:

(A) Startrans IO is hereby authorized to issued debt in the aggregate amount up to \$11.4 million outstanding at any one time, consisting of an \$8.7 million Term Facility, a \$1.6 million Delayed Draw #1 Facility, a \$500,000 Delayed Draw #2 Facility and a

⁹*Westar Energy, Inc.*, 102 FERC ¶ 61,186, *order on reh’g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

¹⁰18 C.F.R. §§ 34.10, 131.43 (2007).

\$600,000 Working Capital Facility, all subject to a maximum interest rate of 6.9 percent. Further, Startrans IO is authorized to issue up to \$25 million of equity in the form of common membership interests under the terms and conditions described in the application. Waivers of the competitive bidding and negotiated placement requirements under 18 C.F.R. §§ 34.2(a) and 34.2(c)(1) and the requirements for the Balance Sheet, Income Statement and Statement of Cash Flows under 18 C.F.R. § 34.4 are hereby granted.

(B) This authorization is effective as of the date of this order and terminates two years later.

(C) This authorization is subject to the conditions specified in the body of this order and restrictions on secured and unsecured debt as outlined above and in *Westar*. This authorization is also contingent upon ultimate Commission approval or acceptance of Startrans IO's sections 203 and 205 applications, which are currently under review.

(D) Startrans IO must file a Report of Securities Issued, under 18 C.F.R. §§ 34.10, 131.43 and 131.50, no later than 30 days after the sale or placement of any long-term debt or equity securities.

(E) The authorization granted in Ordering Paragraph (A) above is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(F) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.